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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

12 EDWARD EUGENE GARNER,

13 Petitioner,

14 v.

15 JAMES COX, et al.,

16 Respondents.

Case No. 2:15-cv-02430-JCM-CWH

**UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE AN
OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS**

(Second Request)

17
18 Petitioner, Edward Garner, by and through counsel, C.B. Kirschner, Assistant
19 Federal Defender, moves this Court for an extension of time of sixty (60) days from
20 November 14, 2017, to and including January 12, 2018, to file an Opposition to
21 Respondents' Motion to Dismiss. This motion is based upon the attached points and
22 authorities and all pleadings and papers on file herein.
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1 **POINTS AND AUTHORITIES**

2 1. On September 29, 2010, Edward Garner was sentenced to a lifetime
3 term of incarceration with parole eligibility after ten (10) years, following his
4 conviction for robbery with use of a deadly weapon. On or about December 15, 2015,
5 he filed a *pro se* Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by
6 a Person in State Custody (Not Sentenced to Death). ECF No. 1-1.

7 2. On April 26, 2016, this Court appointed the Office of the Federal
8 Public Defender as counsel for Mr. Garner. ECF No. 5. Counsel for Garner filed an
9 Amended Petition for Writ of Habeas Corpus on December 12, 2016. ECF No. 15.
10 Respondents filed a Motion to Dismiss on September 1, 2017. ECF No. 32.

11 3. Petitioner's Opposition to the Motion to Dismiss is currently due
12 November 14, 2017. Mr. Garner now requests an additional sixty (60) days, up to
13 and including January 12, 2018, to file the Opposition. This is the second request
14 for an extension of time.

15 4. The additional period of time is necessary in order to effectively
16 represent Mr. Garner. This motion is filed in the interests of justice and not for the
17 purposes of unnecessary delay.

18 5. Unfortunately, undersigned counsel's busy schedule necessitates this
19 extension request. Counsel has completed the following filings within the past two
20 months: September 14, 2017, Application for Certificate of Appealability with the
21 Ninth Circuit Court of Appeals in *Lane v. Neven*, No. 17-16746; September 25,
22 2017, Petition for Writ of Certiorari with the United States Supreme Court in
23 *Rangel v. Neven*; September 28, 2017, Reply to Answer in *Moore v. LeGrand*, case
24 no. 3:13-cv-00390-LRH-WGC; October 10, 2017, First Amended Petition for Writ of
25 Habeas Corpus in *Posey v. Neven*, case no. 2:15-cv-01482-RFB-GWF; October 11,
26 2017, Application for Certificate of Appealability with the Ninth Circuit Court of

1 Appeals in *Coleman v. LeGrand*, No. 17-16902; October 31, 2017, Petition for Writ
2 of Habeas Corpus (Post-Conviction) filed with the Eight Judicial District Court of
3 Nevada in *Yaag v. Baker*, case no. 08C241992; and November 6, 2017, First
4 Amended Petition for Writ of Habeas Corpus in *Sanchez-Dominguez v. Baker*, case
5 no. 3:17-cv-00053-HDM-WGC. Counsel also had a two-day business trip to Ely,
6 Nevada in order to meet with clients being housed at Ely State Prison from October
7 13 to October 14, 2017.

8 6. Additionally, counsel currently has eleven upcoming filing deadlines on
9 various habeas cases, including a First Amended Petition for Writ of Habeas Corpus
10 in *Fields v. Baker*, case no. 3:16-cv-00298-MMD-VPC, due November 17, 2017.
11 Counsel will also be out of the country on a previously scheduled vacation from
12 December 1 to December 6, 2017.

13 7. On November 9, 2017, Chief Deputy Attorney General Heidi Stern was
14 contacted via email and stated that she did not object to the extension, but the lack
15 of objection should not be construed as a waiver of any procedural defenses.

16 8. For the above stated reasons, Petitioner respectfully requests this
17 Court grant the request for an extension of time of sixty (60) days and order the
18 Opposition to be filed on or before January 12, 2018.

19 Dated this 14th day of November, 2017.
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21 Respectfully submitted,
22 FEDERAL PUBLIC DEFENDER
23 DISTRICT OF NEVADA

24 /s/ CB Kirschner

25 C.B. KIRSCHNER
26 Assistant Federal Defender

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IT IS SO ORDERED:

James C. Mahan

UNITED STATES DISTRICT JUDGE

DATED: November 16, 2017

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 14, 2017, I electronically filed the foregoing
3 with the Clerk of the Court for the United States District Court, District of Nevada
4 by using the CM/ECF system.

5 Participants in the case who are registered CM/ECF users will be served by
6 the CM/ECF system and include: Heidi Stern

7 I further certify that some of the participants in the case are not registered
8 CM/ECF users. I have mailed the foregoing documents by First-Class Mail, postage
9 pre-paid, or have dispatched it to a third party commercial carrier for delivery within
10 three calendar days, to the following non-CM/ECF participants:

11 Edward Eugene Garner, #75917
12 Ely State Prison
13 P.O. Box 1989
14 Ely, NV 89301

15 /s/ Adam Dunn
16 _____
17 An Employee of the
18 Federal Public Defender
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